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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR PART 571**

**[Docket No. NHTSA-2015-0057]**

**RIN 2127-AL41**

### **Federal Motor Vehicle Safety Standard**

#### **Lamps, Reflective Devices, and Associated Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the rear license plate holder requirements contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 108; “Lamps, reflective devices, and associated equipment.” The final rule expands upon the proposal in the NPRM and allows license plates on all motor vehicles to be mounted on a plane up to 30 degrees upward from vertical if the upper edge of the license plate is not more than 1.2 meters (47.25 inches) from the ground. Previously, the maximum allowable upward mounting angle was 15 degrees beyond vertical. This final rule increases harmonization with existing requirements in European regulations. Additionally, this final rule increases a manufacturer’s design flexibility while providing opportunity to decrease cost without compromising safety.

**DATES:** Effective [INSERT DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], with optional early compliance as discussed below.

*Petitions for Reconsideration:* Petitions for reconsideration of this final rule must be received not later than [PLEASE INSERT THE DATE 45 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

For technical issues: Mr. David Beck, Office of Crash Avoidance Standards, Telephone: 202-366-6813, Facsimile: 202-366-7002.

For legal issues: Mr. John Piazza, Office of the Chief Counsel, Telephone: 202-366-2992, Facsimile: 202-366-3820.

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

The agency reorganized FMVSS No. 108, “Lamps, reflective devices, and associated equipment,” in a 2007 final rule by streamlining the regulatory text and clarifying the standard’s requirements.<sup>1</sup> The final rule, among other things, incorporated important agency interpretations and reduced reliance on third-party documents incorporated by reference. Regulated parties provided feedback to the agency that documents, incorporated by reference before the 2007 reorganization, made it difficult to determine all of the applicable requirements. For example, the standard incorporated some older versions of SAE standards, not the most current versions; not only were the older SAE standards sometimes difficult to obtain, but some regulated parties may have mistakenly believed that FMVSS No. 108 incorporated the most recent SAE standards. The reorganization was intended to fix these problems. The agency stated in the final rule that the reorganization of FMVSS No. 108 was administrative and not intended to change the standard’s substantive requirements.

SAE<sup>2</sup> International Recommended Practice, SAE J587 OCT81, License Plate Lamps (Rear Registration Plate Lamps) was one of the third-party documents whose requirements were transferred to the regulatory text of the standard. Among other requirements derived from SAE J587 OCT81, S6.6.3 of the final rule required that the rear license plate holder be mounted within an angle  $\pm 15$  degrees of a plane perpendicular to that on which the vehicle stands. This requirement was not expressly stated in the text of the standard previously. Instead, FMVSS No. 108 contained two tables indicating the lighting requirements for different types of vehicles, and these tables indicated that “SAE J587, October 1981” was an “Applicable SAE standard” for a “license plate lamp.”<sup>3</sup> Even though the 2007 final rule explicitly stated the SAE J587

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<sup>1</sup> 72 FR 68234, Dec. 4, 2007.

<sup>2</sup> Previously named Society of Automotive Engineers.

<sup>3</sup> See 49 CFR 571.108, Table I (Required Motor Vehicle Lighting Equipment Other Than Headlamps, Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or More Inches in Overall Width) (2006); see also Table III

requirements for the first time, these requirements were not new, since FMVSS No. 108 had previously incorporated them by reference.

In response to the December 2007 final rule, the agency received petitions for reconsideration from Harley-Davidson Motor Company<sup>4</sup> (Harley-Davidson) and Ford Motor Company (Ford).<sup>5</sup> Ford requested that the agency delete S6.6.3 because, Ford concluded, NHTSA had stated that not all requirements of referenced SAE standards were intended to be incorporated into FMVSS No. 108. Harley-Davidson petitioned NHTSA to either withdraw or amend the license plate mounting angle requirements because, Harley-Davidson stated, FMVSS No. 108 regulated license plate lamps, not holders. After the 2007 final rule was published, the Motorcycle Industry Council (MIC) submitted a petition for reconsideration requesting that the agency amend the license plate angle mounting requirement for motorcycles.<sup>6</sup> Because the petition for reconsideration was received on March 19, 2009, well after the allowed time for such petitions, NHTSA treated it as a petition for rulemaking.<sup>7</sup>

In two separate notices, both issued on April 26, 2011, NHTSA granted MIC's petition for rulemaking<sup>8</sup> and denied, in part, the petitions for reconsideration of the 2007 final rule on the same issue.<sup>9</sup> Because of confusion among regulated entities over whether the license plate mounting angle requirements in SAE J587 OCT81 were incorporated into FMVSS No. 108, the agency announced that it would not enforce the 15 degree mounting angle requirement while it is

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(Required Motor Vehicle Lighting Equipment, Passenger Cars and Motorcycles, and Multipurpose Passenger Vehicles, Trucks, Buses and Trailers of Less than 80 Inches in Overall Width).

<sup>4</sup> Docket No. NHTSA 2011-0052.

<sup>5</sup> Docket No. NHTSA 2007-28322.

<sup>6</sup> MIC had also submitted a petition for rulemaking before the 2007 final rule (on March 14, 2005) requesting that the agency modify the license mounting angle requirement to allow license plates to be mounted between 30 degrees upward and 15 degrees downward of a plane perpendicular to that on which the vehicle stands. NHTSA did not grant this request before or during the administrative re-write of FMVSS No. 108 because the agency's intent was to streamline and clarify the standard, not to make substantive changes.

<sup>7</sup> See 49 CFR 553.35.

<sup>8</sup> See 76 FR 23254, Apr. 26, 2011 (granting petition for rulemaking).

<sup>9</sup> See 76 FR 23255, Apr. 26, 2011 (denying, in part, petitions for reconsideration).

completing the rulemaking that was the subject of the petition.<sup>10</sup> That enforcement policy will end as of the effective date of this final rule.

## **II. Summary of the Notice of Proposed Rulemaking (NPRM)**

On September 3, 2013, the agency published an NPRM proposing to amend FMVSS No. 108 to allow manufacturers greater flexibility in the design of the license plate mounting surface on motorcycles.<sup>11</sup> The proposal stated that the maximum downward angle at which a motorcycle license plate could be mounted (i.e., the plate faces below the horizon) would remain 15 degrees, as would the maximum upward angle for license plates on motorcycles on which the upper edge of the license plate is more than 1.2 m (47.25 inches) from the ground. If the upper edge of the license plate is not more than 1.2 m (47.25 inches) above the ground, however, NHTSA proposed to amend the motorcycle license plate mounting angle requirements to allow mounting angles of up to 30 degrees upward from the vertical (i.e., the plate faces above the horizon).

NHTSA anticipated that this change would reduce costs for manufacturers by allowing them to use the same mounting hardware for the license plate in both the U.S. and Europe. The agency also stated that it did not believe that the proposal would compromise safety because the proposed changes to the license plate mounting angle requirement would not affect the ability of law enforcement personnel or the general public to view the license plate. The NPRM also requested comment on the following issues: amending the license plate mounting angle requirements to allow the license plate to be mounted at an angle of 30 degrees upward of vertical on all vehicles, or, alternatively, on vehicles with a gross vehicle weight rating of 10,000 pounds and less; adopting the maximum height requirement of 1.5 m specified in the analogous European Economic Community (EEC) regulations; and whether the proposed amendments

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<sup>10</sup> See *id.* at 23256.

<sup>11</sup> 78 FR 54210, Sept. 3, 2013.

would negatively affect the ability of license plate recognition technology to read license plate characters.<sup>12</sup>

### **III. Summary of Public Comments and NHTSA's Response**

In response to the NPRM, the agency received comments from trade associations, a non-profit association, manufacturers, and an individual. The trade associations that submitted comments were the Alliance of Automobile Manufacturers (the Alliance) and MIC. The voluntary non-profit association of state and provincial motor vehicle administrations – the American Association of Motor Vehicle Administrators (AAMVA) – submitted a comment. Volkswagen Group of America (Volkswagen) and Harley-Davidson Motor Company (Harley-Davidson) also submitted comments. The agency also received a comment from an individual commenter. Comments are summarized below by topic, along with the agency's responses.

#### **Harmonization and Cost Saving Benefits of the Proposal**

##### Comments

MIC and Harley-Davidson supported the proposal to increase the maximum mounting angle to 30 degrees beyond vertical if the upper edge of the license plate is not more than 1.2 m (47.25 inches) above the ground. (MIC and Harley-Davidson also suggested, as discussed below, adopting the EEC height requirement.) Each commented that the proposal would align FMVSS No. 108 more closely with the EEC mounting angle requirements.<sup>13</sup> Each also stated that this change would increase manufacturer design flexibility and decrease manufacturers' costs without decreasing safety.

##### Agency Response

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<sup>12</sup> Id.

<sup>13</sup> See EEC Council Directive 2009/62/EC, 1990 O.J. (L 198/20).

The agency agrees with MIC's and Harley-Davidson's comments supporting the agency's proposal. Regarding MIC's comment that the proposal would align FMVSS No. 108 more closely with the EEC license plate mounting angle requirement, the agency verified that today's final rule is generally consistent with the inclination provisions of EEC Council Directive 2009/62/EC.<sup>14</sup>

## **Legibility**

### Comments

MIC agreed with the agency's tentative conclusion that the proposed maximum mounting angle would not adversely affect the ability of license plate recognition technology to read license plates. MIC also stated that optics and software could be readily modified, and that the technology is more sensitive to downward than upward angles. A former law enforcement officer stated that license plates mounted at an angle are often more difficult to read in low light. He stated that the proposed rule would interfere with the ability of witnesses, police officers, and the public to identify vehicles.

### Agency Response

In response to the commenter that expressed concern that the proposed rule would decrease the legibility of the license plate in low light conditions, the agency considered the potential impact of increasing the allowable mounting plate angle in the context of the totality of factors that influence the legibility of the plate in low light conditions. FMVSS No. 108 contains various photometric and geometric requirements aimed at assuring legibility of the license plate.

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<sup>14</sup> 3. INCLINATION

3.1. The rear registration plate:

3.1.1. must be at right angles to the median longitudinal plane of the vehicle;

3.1.2. may be inclined from the vertical by not more than 30°, with the vehicle unladen, when the backing plate for the registration number faces upwards;

3.1.3. may be inclined by not more than 15° from the vertical, with the vehicle unladen, when the backing plate for the registration number faces downwards.

While this final rule expands the allowable license plate mounting plane angle, other lamp photometric requirements and geometric requirements remain unchanged. The plate illumination restriction continues to require that the test station targets be illuminated at a value of no less than 8 lux by the license plate lamp. Additionally, the highest to lowest illumination ratio requirements, which protect against shadowing across the plate, remain unchanged. Also unchanged is a requirement that the incident light from the license plate lamp never be less than 8 degrees. These factors all influence the legibility of the license plate in low light conditions more than the mounting angle within the range of allowable angles and heights of this final rule.

Finally, the final rule's adoption of the proposed maximum plate height for which this expanded angle range applies of 1.2 m (measured from the top of the plate) limits the range of likely vertical viewing angles. Considering the sales-weighted average driver's eye height for a car is 1.1 m and 1.42 m for light trucks and vans, the agency anticipates that occurrences of an observer reading plate at large vertical visual angles will remain rare.<sup>15</sup> A driver, whose eye height is at the sales-weighted average height in a sedan, will view the center of a license plate (approximately 1.15 m to 1.125 m from the ground), if mounted at the maximum height of 1.2 m (at the top of the plate), nearly parallel to the horizon. This means that the maximum vertical viewing angle for a license plate mounted at the maximum height and at the maximum angle, when viewed by the average driver's eye height (worst-case situation) will be no greater than 30° from perpendicular to the plate. Considering all these factors, the agency concludes that the legibility of a license plate in low light situations for drivers will not be negatively impacted by today's final rule.

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<sup>15</sup> UMTRI-2002-8, "The Location of Headlamps and Driver Eye Positions In Vehicles Sold in The U.S.A." (2002) Schoettle, B., Sivak, M., and Nakata, Y.



For automated license plate readers, the agency estimates that they are often mounted similar to, or higher than a driver's eye height. As such, the agency believes that the geometric and photometric factors outlined above apply similarly to machine license plate readers as they do to human viewers. As such, the agency agrees with MIC that today's final rule will not have a negative impact on automated plate readers.

## **License Plate Height**

### Comments

Harley-Davidson and MIC commented that the agency should adopt the EEC maximum height allowance of 1.5 m above the ground, as measured from the upper edge of the license plate when the vehicle is unladen. Harley-Davidson stated that this more liberal height requirement would provide greater design flexibility and potential harmonization-related cost savings. MIC stated that, in addition to benefits from harmonization, the 1.2 m and 1.5 m values are arbitrary and there is no material advantage or disadvantage to either.

### Agency Response

The agency has decided not to adopt the EEC maximum height allowance. Neither MIC nor Harley-Davidson submitted data or specific information to support their comments. The agency disagrees with MIC that the 1.2 m maximum plate height for which the expanded angle applies is arbitrary. As outlined above, this restriction limits the vertical visual angle for which a driver is likely to view a license plate. While a 1.2 m maximum plate height, for which the plate may be angled at 30° upward, produces a maximum vertical viewing angle of 30° beyond perpendicular, a value of 1.5 m will not provide such an assurance. If the agency chose the value of 1.5 m as suggested by MIC and Harley-Davidson, and as allowed in the EEC regulation, a viewer located at the average, sales-weighted eye height would need to look up beyond

horizontal for a plate mounted at the upper height limit. Such an arrangement would cause the vertical viewing angle to increase beyond 30° depending on the viewing distance. As such, we have chosen to adapt the proposed limit of 1.2 m as the maximum mounting height for a plate mounted on a plane more than 15 degrees (but less than 30 degrees) upward from vertical. The agency has chosen, however, not to adopt the ECE maximum height of 1.5 m because we are concerned that higher mounting locations could create a situation where the legibility of the plate becomes compromised.

### **Vehicles to Which the Proposed Changes Should Apply**

#### Comments

In the NPRM, the agency solicited comment on amending the mounting angle requirement not just for motorcycles but for other types of vehicles as well. We stated that after receiving public comment the agency may decide to allow license plates to be mounted at an angle of up to 30 degrees upward of vertical on all vehicles, or on all vehicles with a gross vehicle weight rating of 10,000 pounds and less.

The agency received two comments regarding the issue of what vehicles to which the proposed rule should apply. Both Volkswagen and the Alliance stated that the proposed change in mounting angle should apply not just to motorcycles but to all classes of vehicles.

Volkswagen and the Alliance stated that making the rule generally applicable would harmonize the FMVSS No. 108 provision with the comparable ECE regulations and, (as Volkswagen stated) with SAEJ587, both of which apply the maximum 30 degree upward mounting angle to all classes of vehicles.<sup>16</sup> The Alliance also indicated that the permissible upward mounting angle

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<sup>16</sup> SAE J587 SEP2003, 6.5.2. “The design shall be such that, when the plate is mounted on a vehicle as intended and the upper edge of the license plate is more than 1.2 m from the ground, the angle between the plane of the license plate and a vertical plane perpendicular to the plane of the ground on which the vehicle

should not depend on vehicle weight because license plate visibility and legibility do not depend on vehicle weight.

#### Agency Response

The agency anticipates that this final rule can yield design and manufacturing benefits to all motor vehicles, not just motorcycles, without compromising safety. As such, the agency has applied this final rule to all motor vehicles regardless of vehicle type or weight. In the NPRM, the agency considered applying the relaxed requirement to vehicles that are rated at 10,000 pound or less vehicles. After considering the Alliance's comment, the agency agrees that there is no logical connection between the weight rating of the vehicle and the legibility of the plate based on the mounting angle considering the size of the plate and other photometric and geometric requirement are the same for heavy and light vehicles. Applying this final rule to all motor vehicles will allow manufacturers of these additional vehicle types the flexibility to use an expanded mounting angle without compromising safety.

#### **Orientation of the License Plate as either Vertical or Horizontal**

##### Comments

The AAMVA commented that the proposed rule would continue to allow license plates to be mounted vertically (i.e., displayed so that the characters on the plate are read from top to bottom rather than left to right). AAMVA stated that vertically-mounted plates are difficult to read and that it "supports the horizontal display of a front and rear plate and the uniform manufacture and design of plates, to increase the effective and efficient identification of license plates. The use of common characteristics and predictable designs on license plates will enhance readability, usability, and a connection to vehicle registration records."

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stands shall be  $\pm 15$  degrees. If the upper edge of the license plate is not more than 1.2 m from the ground, the plate surface bearing the license numbers shall face between 30 degrees upward and 15 degrees downward from the vertical plane."

### Agency Response

While the agency appreciates AAMVA's comment, this rulemaking is limited to the mounting angle of the plate and does not address whether the license plate is horizontally or vertically displayed. Accordingly, the AAMVA's proposed requirement is outside the scope of this rulemaking.

### **IV. Final Rule**

The agency is amending FMVSS No. 108 to allow license plate mounting angles of up to 30 degrees upward from vertical (an installed plate will face above the horizon) if the upper edge of the license plate is not more than 1.2 m (47.25 inches) from the ground. The agency is also expanding the application of this change beyond that proposed in the NPRM (motorcycles) to include all motor vehicles. The maximum downward angle (an installed plate will face below the horizon) at which a license plate can be mounted remains 15 degrees, as does the maximum upward angle on vehicles for which the upper edge of the license plate is more than 1.2 m (47.25 inches) above the ground. The agency believes that these changes to the license plate mounting angle requirements will reduce costs for manufacturers by allowing them to use the same mounting hardware for the license plate in both the United States and Europe without compromising safety because, as described above, we do not believe that plate legibility will be compromised.

As of the effective date of the final rule we are terminating the policy, in effect since our denial of the petitions for reconsideration of the 2007 final rule, of not enforcing the license plate holder mounting requirement.

## **V. Effective Date:**

In the NPRM we proposed an effective date of 60 days after publication of the final rule. Under the Safety Act, a FMVSS typically is not effective before the 180th day after the standard is published.<sup>17</sup> We did not receive any comments concerning the proposed effective date. In keeping with typical practice, this final rule will be effective [INSERT DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], with optional early compliance. We believe that specifying a later effective date for this final rule will not have any adverse effects or prejudice any regulated parties. This final rule expands the range of compliance options available to manufacturers; it does not enact any new duties or restrictions. Moreover, providing for optional early compliance will allow manufacturers to immediately benefit from the flexibility afforded by the expanded mounting angle requirements the same as if the effective date were earlier.

## **VI. Regulatory Notices and Analyses**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures**

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This final rule does not result in any increased costs or significant benefits. Therefore, it is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures. The Office of Management and Budget has designated this rule as non-significant.

### **B. Executive Order 13609: Promoting International Regulatory Cooperation**

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<sup>17</sup> See 49 U.S.C. 30111(d).

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

This rule more closely aligns the U.S. regulatory requirements for mounting motor vehicle license plates with those of European countries. Permitting an upward mounting angle of up to 30 degrees for all vehicles harmonizes with the ECE Council Directive 2009/62/EC, 1990 O.J. (L 198/20). These changes will increase manufacturer design flexibility without decreasing safety. The agency has chosen, however, not to adopt the ECE maximum height of 1.5 m because we are concerned that the higher mounting locations could create a situation where the legibility of the plate becomes compromised.

#### **C. National Environmental Policy Act**

We have reviewed this final rule for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

#### **D. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity “which operates primarily within the United States.”<sup>18</sup> No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule expands the range of permissible mounting angles for license plates on motor vehicles. We do not anticipate that there will be any increased costs as a result of this rulemaking action. Accordingly, we do not anticipate that this rule will have a significant economic impact on a substantial number of small entities.

#### **E. Executive Order 13132 (Federalism)**

NHTSA has examined today's final rule pursuant to Executive Order 13132<sup>19</sup> and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have “substantial

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<sup>18</sup> 13 CFR 121.105(a).

<sup>19</sup> 64 FR 43255, Aug. 10, 1999.

direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.<sup>20</sup> It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.”<sup>21</sup> Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will

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<sup>20</sup> 49 U.S.C. 30103(b)(1).

<sup>21</sup> 49 U.S.C. 30103(e).



generally not be preempted. However, if and when such a conflict does exist – for example, when the standard at issue is both a minimum and a maximum standard – the State common law tort cause of action is impliedly preempted.<sup>22</sup>

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that the rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this final rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard established here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### **F. Executive Order 12988 (Civil Justice Reform)**

Pursuant to Executive Order 12988, “Civil Justice Reform,”<sup>23</sup> NHTSA has considered whether this rule would have any retroactive effect. This rule does not have any retroactive effect.

#### **G. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or

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<sup>22</sup> See Geier v. American Honda Motor Co., 529 U.S. 861 (2000).

<sup>23</sup> 61 FR 4729, Feb. 7, 1996.

final rule that includes a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with a base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule, by harmonizing this provision of FMVSS No. 108 with the comparable EEC standard will likely reduce the manufacturing and design costs of manufacturers by allowing a greater degree of commonality between vehicles manufactured for sale in the United States and for sale in Europe, and possibly other markets. The rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess, of \$100 million annually. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

#### **H. Paperwork Reduction Act**

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not contain any collection of information requirements requiring review under the PRA.

## **I. Executive Order 13045**

Executive Order 13045<sup>24</sup> applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

Today's rule does not pose such a risk for children. The primary effect of this rule is to amend the license plate mounting angle for motor vehicles.

## **J. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as “performance-based or design-specific technical specification and related management systems practices.” They pertain to “products and processes, such as size, strength, or technical performance of a product, process or material.”

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the

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<sup>24</sup> 62 FR 19885, Apr. 23, 1997.

Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

While SAE J587 SEP 2003, License Plate Lamps (Rear Registration Plate Lamps) contains a mounting angle requirement for motor vehicles similar to the agency's proposal, the agency did not believe that it would be appropriate to adopt J587 SEP 2003 in its entirety. FMVSS No. 108 currently requires that when a single lamp is used to illuminate the plate, the lamp and license plate holder must bear such relation to each other that at no point on the plate must the incident light make an angle of less than 8 degrees to the plane of the plate.<sup>25</sup> SAE J587 SEP 2003 does not contain this requirement. While the agency considered incorporating SAE J587 SEP 2003 in its entirety, we concluded that the deletion of the test requirement to maintain an 8 degree relationship between the lamp and the license plate holder might negatively impact the direction toward which the plate reflects the light provided by the license plate lamp. For this reason the agency has decided not to use a voluntary consensus standard in its entirety in this regulatory activity.

#### **K. Executive Order 13211**

Executive Order 13211<sup>26</sup> applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the rule and explain why it is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

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<sup>25</sup> FMVSS 108, S7.7.15.4.

<sup>26</sup> 66 FR 28355, May 18, 2001.

This rule amends the license plate mounting angle for motor vehicles. Therefore, this rule will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

#### **L. Regulation Identifier Number (RIN)**

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### **Regulatory Text**

##### **List of Subjects in 49 CFR Part 571**

Motor Vehicle Safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as set forth below.

#### **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

2. Amend § 571.108 by revising paragraph S6.6.3 to read as follows:

**§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.**

\* \* \* \* \*

S6.6.3 *License plate holder.* Each rear license plate holder must be designed and constructed to provide a substantial plane surface on which to mount the plate.

S6.6.3.1 For motor vehicles on which the license plate is designed to be mounted on the vehicle such that the upper edge of the license plate is 1.2 m or less from the ground, the plane of the license plate mounting surface and the plane on which the vehicle stands must be perpendicular within 30° upward (an installed plate will face above the horizon) and 15° downward (an installed plate will face below the horizon).

S6.6.3.2 For motor vehicles on which the license plate is designed to be mounted on the vehicle such that the upper edge of the license plate is more than 1.2m from the ground, the plane of the license plate mounting surface and the plane on which the vehicle stands must be perpendicular within  $\pm 15^\circ$ .

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Mark R. Rosekind  
Administrator

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